

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DATE 11-1-81

MINUTES DEPT. 6 E.G.

PRESENTATION. Richard E. Bein

JUDGE

PRO. P. Landa

REPORTER M. Waker

CLERK R. Peterson

BE 451437

Case called for hearing on

Plaintiff present by/with

Defendant present by/with

Case not subject to an affidavit?

Motion is ~~granted~~/denied.

*Cross-complaint of Evidex.*

1 Inc., in the amount of \$526,942.00, as payment for all of  
2 on which plaintiff liable by virtue of its guarantee.  
3 the issued stock of Vectorbeam/ A copy of said Corporate  
4 Installment Note is attached hereto as Exhibit "B" and  
5 incorporated herein by reference. The Stock Purchase Agreement  
6 provides that in the event of any controversy, claim or  
7 dispute between the parties hereto, arising out of or relating  
8 to this agreement or any breach thereof, the prevailing  
9 party shall be entitled to recover from the losing party  
reasonable expenses, attorney's fees and costs.

10 X

11 Prior to execution of the Stock Purchase Agreement,  
12 defendant Cinematronics, Inc., made a series of false and  
13 fraudulent representations to plaintiff including the following:

- 14 1. That the financial statements and information on  
15 Vectorbeam delivered to plaintiff fairly presented the  
16 financial condition of Vectorbeam as of that date and fairly  
17 outlined the results of Vectorbeam's operation for the  
18 periods indicated, in accordance with generally accepted  
19 accounting principles consistently applied.
- 20 2. That Vectorbeam was not subject to any undisclosed  
21 liability or liabilities of any kind, absolute or contingent.
- 22 ③ 3. That Vectorbeam was not a party to any contracts  
23 or commitments of any kind except those disclosed in the Stock  
24 Purchase Agreement executed on December 5, 1979.
- 25 4. That the Stock Purchase Agreement accurately and truly  
26 reflected the terms of that Stock Purchase Agreement as they

1 had been agreed to by the parties to the Stock Purchase Agreement.

2 5. That the inventory of Vectorbeam was accurately valued.

3 6. That Vectorbeam's accounts receivable represented only  
4 amounts legitimately believed to be owed to Vectorbeam.

5 7. That Vectorbeam's accounts payable represented only  
6 amounts owed by Vectorbeam for goods and services sold and  
7 delivered to Vectorbeam.

8 8. That defendant Cinematronics would permit the Corporate  
9 Installment Note, whereby plaintiff/promised to pay Cinematronics  
10 \$487,160 in monthly installments of \$35,000, to be subordinated  
11 under normal and usual terms to loans made by institutional  
12 lenders for inventory and accounts receivable financing.

13 9. That the subsequent adjustments provision contained  
14 in the Stock Purchase Agreement (paragraph 6) would protect  
15 plaintiff from any liability arising out of plaintiff's  
16 reliance on the interim and preliminary financial information,  
17 which defendant Cinematronics furnished to plaintiff.

18 XI

19 The representations made by defendants, and each of them,  
20 were in fact false. The true facts were:

21 1. The financial statements and information on Vectorbeam  
22 delivered to plaintiff did not fairly outline the results of  
23 Vectorbeam's operation for the periods indicated. Instead,  
24 the financial statements provided materially overvalued  
25 inventory and accounts receivable of Vectorbeam, and they  
26 failed to disclose contractual liabilities owed by Vectorbeam.



2. Vectorbeam was, in fact, subject to material liabilities not incurred in the ordinary course of business, which were not disclosed at any time in the negotiations or in the Purchase Agreement itself. Specifically, an equipment and furniture lease and an automobile lease, copies of which leases are attached hereto as Exhibits "C" and "D" respectively, and incorporated by reference, were not disclosed.

3. Vectorbeam was, in fact, a party to material contracts and commitments not disclosed in the Stock Purchase Agreement, including an equipment and office furniture lease and an automobile lease. (Refer to Exhibits "C" and "D" attached)

4. The Stock Purchase Agreement did not accurately and truly reflect the terms of that Stock Purchase Agreement as they had been agreed to by the parties to the Stock Purchase Agreement. The Stock Purchase Agreement incorporated a provision whereby plaintiff assumed liability on the Gil Levine Employment Agreement, a copy of which is attached hereto as Exhibit "E" and incorporated by reference. The inclusion of this provision was directly contrary to the understanding of all parties to the contract.

5. The inventory of Vectorbeam was not accurately valued. In fact, it was overvalued by an amount believed to be in excess of \$325,000.00.

6. Vectorbeam's accounts receivable did not represent only amounts legitimately believed to be owed to Vectorbeam. In fact, it included a debt in the amount of \$19,678.18 which the creditor

1 K. H. Belam Co., had set off against monies owed to said creditor  
2 by Cinematronics.

3 7. Vectorbeam's accounts payable did not represent only  
4 amounts owed by Vectorbeam for goods and services sold and  
5 delivered to Vectorbeam. Rather, they included a debt  
6 allegedly owed by Vectorbeam to L & M Sheet Metal Fabricating  
7 in the amount of \$14,344.00 for goods not delivered to  
8 Vectorbeam.

9 8. Cinematronics has refused and continues to refuse to  
10 subordinate the Corporate Installment Note of plaintiff.

11 9. The Subsequent Adjustments provision of the Stock  
12 Purchase Agreement does not, in fact, protect plaintiff from  
13 any damages caused by plaintiff's reliance on the interim  
14 and preliminary financial information.

15 XII

16 When defendants, and each of them, made the above  
17 representations they knew them to be false, and these representa-  
18 tions were made by defendants, and each of them, with the  
19 intent to defraud and deceive plaintiff and with the intent  
20 to induce plaintiff to act in the manner herein alleged.

21 XIII

22 Plaintiff, at the time these representations were made by  
23 defendants, and each of them, and at the time plaintiff took  
24 the actions herein alleged was ignorant of the falsity of  
25 defendants', and each of their, representations and believed  
26